

**Calendar No. 260**

104TH CONGRESS  
1ST Session

**S. 956**

**A BILL**

To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes.

DECEMBER 7, 1995

Reported with an amendment

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## IN THE SENATE OF THE UNITED STATES

JUNE 22 (legislative day, JUNE 19), 1995

Mr. GORTON (for himself, Mr. BURNS, Mr. MURKOWSKI, Mr. STEVENS, Mr. KEMPTHORNE, Mr. CRAIG, Mr. PACKWOOD, and Mr. HATFIELD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

DECEMBER 7, 1995

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Ninth Circuit Court  
5       of Appeals Reorganization Act of 1995”.

1 **SEC. 2. NUMBER AND COMPOSITION OF CIRCUITS.**

2 Section 41 of title 28, United States Code, is  
3 amended—

4 (1) in the matter before the table, by striking  
5 out “thirteen” and inserting in lieu thereof “four-  
6 teen”;

7 (2) in the table, by striking out the item relat-  
8 ing to the ninth circuit and inserting in lieu thereof  
9 the following new item:

“Ninth ..... Arizona, California, Hawaii, Nevada,  
Guam, Northern Mariana Is-  
lands.”;

10 and

11 (3) between the last 2 items of the table, by in-  
12 serting the following new item:

“Twelfth ..... Alaska, Idaho, Montana, Oregon,  
Washington.”.

13 **SEC. 3. NUMBER OF CIRCUIT JUDGES.**

14 The table in section 44(a) of title 28, United States  
15 Code, is amended—

16 (1) by striking out the item relating to the  
17 ninth circuit and inserting in lieu thereof the follow-  
18 ing new item:

“Ninth ..... 19”;

19 and

20 (2) by inserting between the last 2 items at the  
21 end thereof the following new item:

“Twelfth ..... 9”.

1 **SEC. 4. PLACES OF CIRCUIT COURT.**

2 The table in section 48 of title 28, United States  
3 Code, is amended—

4 (1) by striking out the item relating to the  
5 ninth circuit and inserting in lieu thereof the follow-  
6 ing new item:

“Ninth ..... San Francisco, Los Angeles.”;

7 and

8 (2) by inserting between the last 2 items at the  
9 end thereof the following new item:

“Twelfth ..... Portland, Seattle.”.

10 **SEC. 5. ASSIGNMENT OF CIRCUIT JUDGES.**

11 Each circuit judge in regular active service of the  
12 former ninth circuit whose official station on the day be-  
13 fore the effective date of this Act—

14 (1) is in Arizona, California, Hawaii, Nevada,  
15 Guam, or the Northern Mariana Islands is assigned  
16 as a circuit judge of the new ninth circuit; and

17 (2) is in Alaska, Idaho, Montana, Oregon, or  
18 Washington is assigned as a circuit judge of the  
19 twelfth circuit.

20 **SEC. 6. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

21 Each judge who is a senior judge of the former ninth  
22 circuit on the day before the effective date of this Act may  
23 elect to be assigned to the new ninth circuit or to the  
24 twelfth circuit and shall notify the Director of the Admin-

1 istrative Office of the United States Courts of such elec-  
 2 tion.

3 **SEC. 7. SENIORITY OF JUDGES.**

4 The seniority of each judge—

5 (1) who is assigned under section 5 of this Act;

6 or

7 (2) who elects to be assigned under section 6 of

8 this Act;

9 shall run from the date of commission of such judge as  
 10 a judge of the former ninth circuit.

11 **SEC. 8. APPLICATION TO CASES.**

12 The provisions of the following paragraphs of this  
 13 section apply to any case in which, on the day before the  
 14 effective date of this Act, an appeal or other proceeding  
 15 has been filed with the former ninth circuit:

16 (1) If the matter has been submitted for deci-  
 17 sion, further proceedings in respect of the matter  
 18 shall be had in the same manner and with the same  
 19 effect as if this Act had not been enacted.

20 (2) If the matter has not been submitted for de-  
 21 cision, the appeal or proceeding, together with the  
 22 original papers, printed records, and record entries  
 23 duly certified, shall, by appropriate orders, be trans-  
 24 ferred to the court to which it would have gone had  
 25 this Act been in full force and effect at the time

1 such appeal was taken or other proceeding com-  
2 menced, and further proceedings in respect of the  
3 case shall be had in the same manner and with the  
4 same effect as if the appeal or other proceeding had  
5 been filed in such court.

6 ~~(3)~~ A petition for rehearing or a petition for re-  
7 hearing en banc in a matter decided before the effec-  
8 tive date of this Act, or submitted before the effec-  
9 tive date of this Act and decided on or after the ef-  
10 fective date as provided in paragraph (1) of this sec-  
11 tion, shall be treated in the same manner and with  
12 the same effect as though this Act had not been en-  
13 acted. If a petition for rehearing en banc is granted,  
14 the matter shall be reheard by a court comprised as  
15 though this Act had not been enacted.

16 **SEC. 9. DEFINITIONS.**

17 For purposes of this Act, the term—

18 ~~(1)~~ “former ninth circuit” means the ninth ju-  
19 dicial circuit of the United States as in existence on  
20 the day before the effective date of this Act;

21 ~~(2)~~ “new ninth circuit” means the ninth judicial  
22 circuit of the United States established by the  
23 amendment made by section 2(2) of this Act; and

5       The court of appeals for the ninth circuit as con-  
6 stituted on the day before the effective date of this Act  
7 may take such administrative action as may be required  
8 to carry out this Act. Such court shall cease to exist for  
9 administrative purposes on July 1, 1997.

11        This Act and the amendments made by this Act shall  
12   become effective on October 1, 1995.

14        *This Act may be cited as the “Ninth Circuit Court of*  
15 *Appeals Reorganization Act of 1995”.*

17        *Section 41 of title 28, United States Code, is*  
18 *amended—*

19 (1) in the matter before the table, by striking out  
20 “thirteen” and inserting in lieu thereof “fourteen”;

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

“Ninth ..... *California, Hawaii, Guam, Northern Mariana Islands.*”;

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**3 SEC. 3. NUMBER OF CIRCUIT JUDGES.**

4       *The table in section 44(a) of title 28, United States*  
5 *Code, is amended—*

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

9 *and*

10                   (2) by inserting between the last 2 items at the  
11                   end thereof the following new item:

12 ***SEC. 4. PLACES OF CIRCUIT COURT.***

13        *The table in section 48 of title 28, United States Code,*  
14 *is amended—*

15                   (1) *by striking out the item relating to the ninth*  
16                   *circuit and inserting in lieu thereof the following new*  
17                   *item:*

18 *and*

19                   (2) by inserting between the last 2 items at the  
20                   end thereof the following new item:

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1 **SEC. 5. ASSIGNMENT OF CIRCUIT JUDGES AND CLERK OF**  
 2 **THE COURT.**

3 (a) *CIRCUIT JUDGES.*—No later than 60 days after the  
 4 date of the enactment of this Act, the judicial council for  
 5 the former ninth circuit shall make assignments of the cir-  
 6 cuit judges of the former ninth circuit to the new ninth cir-  
 7 cuit and the twelfth circuit, consistent with the provisions  
 8 of this Act.

9 (b) *CLERK OF THE COURT.*—The Clerk of the Court  
 10 for the Twelfth Circuit United States Court of Appeals shall  
 11 be located in Phoenix, Arizona.

12 **SEC. 6. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

13 Each judge who is a senior judge of the former ninth  
 14 circuit on the day before the effective date of this Act may  
 15 elect to be assigned to the new ninth circuit or to the twelfth  
 16 circuit and shall notify the Director of the Administrative  
 17 Office of the United States Courts of such election.

18 **SEC. 7. SENIORITY OF JUDGES.**

19 The seniority of each judge—

20 (1) who is assigned under section 5 of this Act;

21 or

22 (2) who elects to be assigned under section 6 of  
 23 this Act;

24 shall run from the date of commission of such judge as a  
 25 judge of the former ninth circuit.

1 **SEC. 8. APPLICATION TO CASES.**

2       *The provisions of the following paragraphs of this sec-*  
3 *tion apply to any case in which, on the day before the effec-*  
4 *tive date of this Act, an appeal or other proceeding has been*  
5 *filed with the former ninth circuit:*

6           (1) *If the matter has been submitted for decision,*  
7 *further proceedings in respect of the matter shall be*  
8 *had in the same manner and with the same effect as*  
9 *if this Act had not been enacted.*

10          (2) *If the matter has not been submitted for deci-*  
11 *sion, the appeal or proceeding, together with the origi-*  
12 *nal papers, printed records, and record entries duly*  
13 *certified, shall, by appropriate orders, be transferred*  
14 *to the court to which it would have gone had this Act*  
15 *been in full force and effect at the time such appeal*  
16 *was taken or other proceeding commenced, and fur-*  
17 *ther proceedings in respect of the case shall be had in*  
18 *the same manner and with the same effect as if the*  
19 *appeal or other proceeding had been filed in such*  
20 *court.*

21          (3) *A petition for rehearing or a petition for re-*  
22 *hearing en banc in a matter decided before the effec-*  
23 *tive date of this Act, or submitted before the effective*  
24 *date of this Act and decided on or after the effective*  
25 *date as provided in paragraph (1) of this section,*  
26 *shall be treated in the same manner and with the*

1        *same effect as though this Act had not been enacted.*

2        *If a petition for rehearing en banc is granted, the*  
 3        *matter shall be reheard by a court comprised as*  
 4        *though this Act had not been enacted.*

5        **SEC. 9. DEFINITIONS.**

6        *For purposes of this Act, the term—*

7                (1) *“former ninth circuit” means the ninth judi-*  
 8        *cial circuit of the United States as in existence on the*  
 9        *day before the effective date of this Act;*

10               (2) *“new ninth circuit” means the ninth judicial*  
 11        *circuit of the United States established by the amend-*  
 12        *ment made by section 2(2) of this Act; and*

13               (3) *“twelfth circuit” means the twelfth judicial*  
 14        *circuit of the United States established by the amend-*  
 15        *ment made by section 2(3) of this Act.*

16        **SEC. 10. ADMINISTRATION.**

17        *The court of appeals for the ninth circuit as con-*  
 18        *stituted on the day before the effective date of this Act may*  
 19        *take such administrative action as may be required to carry*  
 20        *out this Act. Such court shall cease to exist for administra-*  
 21        *tive purposes on July 1, 1997.*

22        **SEC. 11. EFFECTIVE DATE.**

23        *This Act and the amendments made by this Act shall*  
 24        *take effect 60 days after the date of the enactment of this*  
 25        *Act.*